IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 979 of 1999
IN
SPECIAL CIVIL APPLICATION No 8629 of 1998

WITH

LETTERS PATENT APPEAL No 980 of 1999
IN
SPECIAL CIVIL APPLICATION No 8625 of 1998

WITH

LETTERS PATENT APPEAL nO 984 OF 1999
IN
SPECIAL CIVIL APPLICATION No 7809 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FIROZKHAN HUSEINMIYA RATHOD
Versus
COMMISSIONER OF POLICE FOR THE CITY OF AHMEDABAD

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Appearance:
MR ANIL S DAVE for Appellant

MS HARSHA DEVANI, LD. AGP for Respondent No. 1, 3

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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.PARIKH
Date of decision: 18/08/1999

ORAL JUDGEMENT [ Per M.S. Parikh, J.]

1. Although the notices have been issued in all these Letters Patent Appeals, the learned counsel for the appellants and the Ld. A.G.P. have argued the matters and, therefore, the same are being finally disposed of.

2. All the three Letters Patent Appeals arise from a common judgment rendered by the learned Single Judge on 28/6/1999 and 29/6/1999 in Special Civil Applications Nos. 8629, 8625 and of 1998 moved by the three appellants challenging their detention under Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'PASA Act'). All the detention orders were based on the same evidence. The three appellants being respectively the Police Sub Inspector and the Constables happened to be co-accused in an offence registered at C.R. No. 380/98 in Kagdapith Police Station for the offences punishable u/Ss. 318, 506 (2), 170 and 114 of the Indian Penal Code (for short 'IPC') as also section 25(1) of the Arms Act. The grounds of detention served upon the respective appellants alongwith the orders of detention indicate that over and above the aforesaid registered offences, further information has been received by the concerned authorities in the form of statements of witnesses. The first witness whose identity has been withheld stated that on 10/8/1998 when he was passing nearby outside Raipur Gate, three persons came and intercepted him and asked him to open his bag. These three persons claimed themselves to be the personnel from the office of the Directorate of Prohibition. Upon inspection of the bag, nothing objectionable could be found. The witness thereupon was threatened to be involved in a false case of narcotics and was robbed of Rs.7,000/-. This incident attracted passers by and the crowd gathered. On the appellant being the petitioner in S.C.A. No. 7809 of 1998 aiming a revolder at the crowd, people became panicky and started running away. The second withess narrated the incident dated 11/8/1998. According to him, the appellants visited the place of business of witness

around 9.00 O'clock in the evening and projected themselves to be personnel from the office of the Directorate of Prohibition and stated that they have received information to the effect that stock of liquor was stored in the shop of the witness and they had given threat to raid the premises. Upon inspection, no liquor was found from the shop of the witness. The witness stated that he neither consumed liquor nor did he keep it. This irritated the appellant Nirav Vyas petitioner of S.C.A. No. 7809 of 1998, who took out his revolder and aimed at the witness. The two others also abused the witness. All the three thereafter extorted Rs.5,000/-. Upon the witness demanding the money back, all the three dragged him out of his shop on to the public road and started beating him. The witness shouted for help. People gathered there. The appellants abused the people who gathered there and the appellant Nirav Vyas aimed his revolver at the people. This generated terror amongst the people, who became panicky and disbursed. This witness being afraid did not complain about the incident in question.

3. The appellants canvassed before the learned Single Judge that the appellants could not be said to be habitual offenders and, therefore, they could not be branded as 'dangerous persons' as defined in clause (c) of section 2 of the PASA Act. They could also not be said to have acted in a manner prejudicial to the maintenance of public order. Number of decisions were pressed into service in support of these contentions. The learned Single Judge referred to all the decisions and has come to the conclusion that it was not a case of a solitary incident as referred to in the decisions which were canvassed. According to the learned Single Judge the incidents narrated by the witnesses were quite proximate in point of time and they clearly revealed that the appellants could be said to be habitual offenders so as to bring them within the definition of 'dangerous person' as contained in section 2 (c) of the PASA Act. The learned Single Judge also came to the conclusion that the activities of the appellants were detrimental to maintenance of public order and unless prevented there was possibility of the appellants to commit/repeat offences. It is this decision which has been subjected to challenge in these Letters Patent Appeals.

4. We have heard Mr. Anil Dave, learned advocate for the appellants in all the three appeals and Ms. Harsha Devani, Ld. A.G.P. for the Government. Mr. Dave first referred to a decision of the Hon'ble Supreme Court in the case of Rashidmiya v/s. Police

Commissioner, Ahmedabad reported in AIR 1989 SC 1703. He drew our attention to para. 14 of the citation, which inter-alia says that to bring a person within the definition of section 2 (c) of the PASA Act it must be shown that the person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or XVII or XXII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. In the case before the Supreme Court there was a case registered in Crime No. 2/88 in Kalupur Police Station, where the detenu was alleged to have committed offences u/Ss. 307, 120-B, 212 of the Indian Penal Code and section 25 of the Arms Act. The Supreme Court has said that in order to bring a person within the definition of 'dangerous person' under section 2 (c) of the PASA Act, it must be shown that he is habitually committing or attempting to commit or abetting the commission of offences enumerated therein. In the case before the Supreme Court there was a solitary case under the relevant provisions of the Indian Penal Code as well as Arms Act. Dealing with the grounds of detention the Supreme Court said that there were general and vague allegations made therein and in the absence of specific instance or registration of any case thereof, they could not be construed as offences falling under any of the above three Chapters of the IPC or the Arms Act. It might be noted from the said observations that the grounds of detention before the Hon'ble Supreme Court did not indicate any specific instance or case over and above the one which was registered in the Kalupur police station.

5. Mr. Dave also referred to a decision in the case of Ayub v. S.N. Sinha reported in 1990 Criminal Law Journal p. 2232. There also Rashidmiya's case was referred to for saying that a solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences. In that case except Crime No. 96/90 there was no other case pending and the other two crimes which were referred to in the grounds ended in acquittal. Under such circumstances, the detenu could not be said to be a habitual offender so as to bring him within the meaning of definition of 'dangerous person'. The Apex Court has observed that the learned counsel appearing for the State could not place any material from which it could be inferred that the petitioner was a habitual offender. Thus, even in this case there was a solitary incident on the basis of which the Apex Court come to the conclusion that the detenu could not be

branded as 'dangerous person'.

6. Mr. Dave then referred to a bench decision of this Court in the case of H.F. Kazi v. Commissioner of Police reported in 33 (2) G.L.R. p. 1332. In that case the grounds of detention also disclosed that a singular crime, namely C.R. No. 168 of 1991 was registered at Ellisbridge police station on 15/3/1991 u/Ss. 365, 342, 506(1) read with sec. 114 of the IPC. It is no doubt true that the statements of witnesses were recorded by the sponsoring authority, but in that respect the Bench observed that they contained general and broad allegations regarding the alleged anti-social activities being carried on by the detenu in that case. The Bench, therefore, came to the conclusion that they could not have been taken as the basis to reach subjective satisfaction that the detenu was required to be preventively detained. .

7. From the aforesaid decisions we are unable to find any ratio that statements of witnesses which have not been transformed into registered offences could not at all be considered. What has been said in the said decisions is that the statements of witnesses must be consisting of specific incidents and they should not be general and vague in nature. It is in this connection that Ld. A.G.P. has referred to a decision, recent in point of time, in the case of A.K. Kudeatalla Khan Pathan v. State of Gujarat & ors. reported in J.T. 1999 (4) S.C. 455. There the detaining authority on being satisfied from the activities of the detenu that he belonged to a notorious gang and the members of the gang hatched conspiracy to extort money from the people who were engaged in building construction business in the city by putting the people under threat of fear of death, recorded that the detenu was a "dangerous person" within the meaning of section 2 (c) of the PASA Act and the activities of the detenue and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. The detention was challenged before this Court on the ground that the detenu could not be branded as 'dangerous person' within the meaning of section 2 (c) of the PASA Act. This Court held that the satisfaction of the detaining authority was not based solely on the incident culminating in registration of the criminal case under sections 120-B, 387 and 506 (2) of the IPC, but also the incidents that happened on 26/7/1998 and 2/8/1998 about which the two witnesses stated before the detaining authority and, therefore, the satisfaction of the detaining authority,

holding the detenu to be a "dangerous person" could not be said to be vitiated. It was argued before the Supreme Court that the expression 'dangerous person' u/S. 2 (c) of the PASA Act and expression "habitually" would obviously mean repeatedly or persistently. It was also urged by the learned counsel for the petitioner that an isolated act would not justify an inference of habitual commission of the activity. Dealing with the registered case as well as the statements of the witnesses, which did not result into registered cases, the Apex Court observed that there were two more incidents than the one which was registered in which the detenu was involved. On the first occasion a sum of Rs.1 lakh was demanded and when the person refused, he was dragged and assaulted and on the second occasion a sum of Rs.50,000/- was demanded and on refusal they were dragged on the road and were beaten on the public road. The Apex Court observed that there was no bar for taking these incidents into consideration for the satisfaction of the detaining authority that the person was a 'dangerous person' within the ambit of section 2 (c) of the PASA Act. In our considered opinion, this last mentioned decision provides a ratio to the effect that the incidents, if they are specific and clear, even though not resulting into registration of the offences, could be considered for arriving at a subjective satisfaction by the detaining authority.

8. Mr. Dave submitted before us that the decision in the case of Ayub v. S.N. Sinha (supra) was not presented before the Apex Court in the last mentioned case. That is of no consequence in as much as in Ayub's case (supra) there was in fact a solitary case since out of 3 cases, 2 resulted into acquittal and one was pending and it was pointed out by the State from the record that there was no other material from which it could be inferred that detenu was a habitual offender. It might be noted from the grounds of detention, which have been referred to by the learned Single Judge that there are specific incidents flowing from the statements of the witnesses which have been recorded. The modus operandi which is revealed run parallel to the registered case. In that view of the matter, it is not possible for us to accept the submissions of Mr. Dave for holding that the appellants could not be branded as 'dangerous persons' within the meaning of section 2 (c) of the PASA Act.

9. It has next been submitted by Mr. Dave that the subjective satisfaction of the detaining authority would stand vitiated as the acts and/or activities in question would not tend to disturb public order. He has relied

upon the decisions referred to hereinabove also in support of this submission. Public order and law and order are two different and distinct concepts and a clear distinction between the two has been noticed by the Apex Court in a number of decisions. The test to be adopted in determining whether an act affects law and order or public order would be the reach of the particular activity to the public at large and its likelihood of disturbing the even tempo of living. There may be overlapping while drawing the distinction between the two concepts, if one has merely to look at the act or activity and not its impact in given circumstances. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. Therefore, even a solitary act of omission or commission can be taken into consideration for being subjectively satisfied about its reach, effect and potentiality vis-a-vis public tranquility. Thus, it is the degree and extent of the reach of the act upon the society, which would be vital for consideration of question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order.

10. In Amanulla Khan's case (supra) the Apex Court has observed and held that the activities of the detenu trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money, to drag them on public road would undoubtedly affect the even tempo of life of the society and therefore, such activities cannot be said to be a mere disturbance of law and order. In the case on hand the extortion of money by generating fear of death and refusal to part with the same resulting in assault and beating in public are similar features with an added feature of generation of fear in the public mind that the police personnel might indulge in false implication of any citizen in serious offence/s under the Narcotic Drugs and Psychotropic Substances Act, 1985. Thus, the activities of the appellants were thus such as would legitimately warrant for required subjective satisfaction of the detaining authority for passing impugned orders of detention.

In the above view of the matters, we see no reason to interfere with the judgments in question rendered by the learned Single Judge. The appeals are accordingly dismissed.

Date : 18/8/1999. [K.G. Balakrishnan, CJ. ]

[M.S. Parikh, J.]

PVR.